

**Cooperative NRDAR Workshop**  
**San Diego, CA**

**ASTSWMO State Trustee Efforts**



**Dale C. Young**  
**Chair, ASTSWMO NRD Focus Group**  
**June 9-10, 2004**

# **What & who is ASTSWMO?**

- Association of State & Territorial  
Solid Waste Management Officials

- CERCLA Research Committee
  - NRD Focus Group (1994)
    - 10 States
      - CA, CO, NJ, IN, NY, MA, MO, SC, TX, NM

- <http://www.astswmo.org/>



# **ASTSWMO NRD Focus Group**



## **Mission statement**

**To enhance ability of States, Federal government, & private parties to effectively & efficiently address injuries to natural resources due to releases of hazardous substances or discharges of petroleum**



# **ASTSWMO Survey**

## **State NRD Activities 1997**

### *Overview of State NRD programs*

- **9 States w/ NRD programs**
  - **CA, DE, MA, TX, MI, NY, NJ, NM, WA**
- **NRD Program staff: Range 0 - 9**
- **Annual budget: \$ 0 - \$ 350,000**
- **State Coordination w/:**
  - **Federal Trustees      Good**
  - **EPA                      Poor to fair**
  - **Federal Facilities      Poor to fair**

## **ASTSWMO NRD Goals**

- *Improve Coordination w/ Remedial Agencies (EPA & State)*
- *Improve Coordination w/ Federal Trustees & Industry*
- *Conduct Outreach w/ State Trustees*
- *Review CERCLA Reauthorization*





# **ASTSWMO Issue #1**

## **CERCLA Reauthorization**

- ***1995 CERCLA Position Paper***
- ***1995-97 Congressional Testimony***
- ***1995-97 NRD Stakeholder Discussions***
  - **Industry Coalition for NRD Reform**
  - **Congressional Committees**
  - **Federal Trustees**
  - **Environmental Groups**

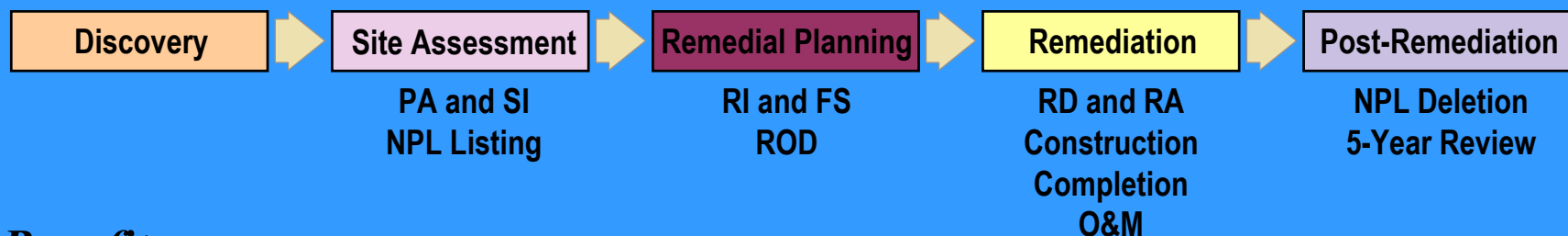


## **ASTSWMO Issue #2**

### **Improve Coordination w/ EPA**

*CERCLA 104 (b) (2) & NCP: Notification & Coordination via Pipeline*

#### **Superfund Remedial Actions:**



- ***Benefits:*** Trustees & Response Agencies share expertise

- Restoration actions compatible w/ remedy
- Facilitates global settlement

- **ASTSWMO NRD Focus Group**

- **Paper:** *Coordinating NRD w/ Superfund Program: 1997*

- **On-going Meetings w/ EPA**

- **EPA NARPM Annual Meetings**

## **ASTSWMO Issue # 3**

### **Conduct State Trustee Outreach**

*Promote Effective, Efficient, Consistent State Trustee  
Approaches to Assessment & Restoration*

- **ASTSWMO NRD Focus Group Papers**
  - *1998: Compendium of Groundwater Valuation Methodologies*
  - *2000: Compendium of Restoration Methodologies*
  - *2000: NRD Documents and Materials: Reference List*
  - *2004: Cooperation in the Natural Resource Damages Process:  
Initiation, Assessment and Restoration*
- **NRD Workshops: 1996 & 2001**



# **ASTSWMO Issue # 4**

## **Improve Coordination w/ Industry**

- **Promote Cooperative Assessments**

- *Benefits :*

- **Expedite Assessment & Restoration**
    - **Resolve PRP liability: global settlement**
    - **Reduce costs**



# **ASTSWMO Issue # 4**

## **Improve Coordination w/ Industry**

### **1998: ASTSWMO Meeting w/ Industry Reps.**

- ***Cooperative Assessment Issues:***

- Specify trustee agencies
- Specify affected trust resources early & injury categories as much as possible
- Identify & agree on necessary studies
- Define specific restoration endpoints, i.e., primary (on-site habitat) or remedy enhancement
- Establish agreed framework for the cooperative assessment by entering an MOU
- Determine when injury began.
- Establish a program to communicate with the public
- Establish procedures for undertaking & use of independent studies. Address right of parties to conduct such studies & extent to which information may be used.
- Results of joint studies should not be challenged/disputed
- Establish dispute resolution & termination procedures
- Determine source of funding for studies
- Allow for stipulated facts or actions
- Determine scope of cooperative assessment, e.g. (1) collection of data, (2) interpretation of collected data, and (3) development of restoration plan
- To extent practicable, restoration criteria should be identified in cooperative assessment
- Try to include all agencies, especially remedial programs

## **ASTSWMO Issue # 4**

### **Improve Coordination w/ Industry**

- **ASTSWMO NRD Focus Group Paper**

*1999: Perspectives On Achieving Cooperation in Assessing Injury and Planning the Restoration of Natural Resources*

- **RP Concerns & Suggestions to Improve the Process**
- **Benefits**
- **Issues**

- **2002- present: AD-HOC INDUSTRY NRD GROUP**

- *ASTSWMO & AD-HOC INDUSTRY: Joint Paper (2004)*

- **NOAA CAP**

- **DOI FACA**

# **State Trustee Challenges**

## **Assessment Methodologies**

### **Cooperative Assessments @ OPA vs. CERCLA Sites**

#### **Comprehensive Assessments**

- **NY: Hudson River**
- **MT: Clark Fork River Basin**
- **ID: Bunker Hill/Coeur d'Alene**
- **CA: Montrose**

#### **State Trustee: Simplified Assessments**

##### ***SIMPLIFIED ASSESSMENT TOOLS ISSUES***

- Alternative to NRD Assessment
- Systematic method for small-interim spills
- Developed for Oil only
- Regulatory/Statutory authority
- Establish monetary limits (per gallon)
- Industry support

##### ***WASHINGTON Compensation Schedule***

- 1992: c. 173-183: "Preassessment Screening & Oil Spill Compensation Schedule Regulations"
- Purpose: establish procedures to screen cases, determine damages
- Applicability: Oil spills into state waters
- Lakes, rivers, ponds, streams, underground water, estuaries, beaches, tidal flats,...

# **State Trustee Challenges**

## **Assessment Methodologies**

- **LA: Regional Restoration Planning Program**
- **NJ: Policy Directive: Sept. 2003**
  - To address potential claims
  - “While we have aggressively pursued compensation for natural resource damages from polluters, only a small percentage of the larger universe of existing claims has been addressed,” said Commissioner Campbell. “An accelerated effort is needed to ensure that the statute of limitations for outstanding claims does not expire and result in the loss of the public’s right to compensation.”
  - Groundwater Assessment Formula

# The Future of NRD

- Expedite Restoration of Resources
  - Develop Statewide NRD programs
  - Develop Simplified NRD assessment methods
  - Expedite quantification of damages
  - Integrate NRDAR and Remedial

